No. 11, Original

In The
Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

REPLY BRIEF AND SUPPLEMENTAL APPENDIX IN SUPPORT OF MOTION TO REOPEN AND FOR A SUPPLEMENTAL DECREE

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SUMMARY OF ARGUMENT

New Jersey's petition falls squarely within this Court's retained jurisdiction under the 1935 decree. That decree explicitly states that it is "without prejudice" to New Jersey's rights under the 1905 Compact. Nevertheless, Delaware now argues that the Court's boundary award in the 1935 decree effectively "altered" or "reduced" New Jersey's rights under Article VII of the 1905 Compact. A supplemental decree is necessary to "carry into effect" paragraph 7 of the decree, and thereby to confirm that the 1935 decree did not alter New Jersey's pre-existing, exclusive State riparian jurisdiction protected by Article VII.

The exercise of original jurisdiction would also be warranted here even if the Court's traditional test were applied. Delaware has caused serious injury to the rights of New Jersey by claiming authority to require permits for riparian improvements on the New Jersey side of the Delaware River. Delaware is asserting this authority on a current and ongoing basis and has withheld at least one permit. Regardless of whether Delaware's assertion of permitting authority takes the form of an approval or denial of any particular permit, its actions violate Article VII of the Compact, which reserved to New Jersey exclusive State riparian jurisdiction on its side of the river. In the case of Crown Landing, Delaware's action has also blocked New Jersey's completion of its own permit review, because Delaware will not allow the collection of subaqueous sediment samples needed by New Jersey's regulators to evaluate further the environmental impacts of the project. Delaware's interference with New Jersey's exclusive State

riparian jurisdiction is active and continuing, not speculative or remote. The controversy is therefore ripe.

Because New Jersey seeks to enforce its own rights under the 1905 Compact, it is the proper plaintiff and the real party in interest. There is no proper alternative forum where this issue could be raised or New Jersey's interests protected.

Delaware's argument on the merits is incorrectly premised on the presumption that it could not have surrendered its riparian jurisdiction to New Jersey in Article VII of the 1905 Compact unless it did so in unmistakable terms. This argument must fail as a matter of law for the same reason the Court rejected it in *Virginia v. Maryland*, 540 U.S. 56, 67-69 (2003). At the time the 1905 Compact was signed, the boundary was actively disputed; New Jersey, not Delaware, was exercising riparian jurisdiction on the New Jersey side of the River; and neither State would have assumed that Delaware enjoyed well-settled jurisdiction to the New Jersey shoreline -- a precondition for the application of the "unmistakability doctrine."

Whether considered by itself or in the context of the other articles, Article VII unambiguously gave New Jersey exclusive State riparian jurisdiction on its side of the River. It is a jurisdiction "on its own side . . . of every kind and nature," which precludes the possibility of concurrent jurisdiction.

Because the Compact is unambiguous, extrinsic evidence is not relevant. But that evidence, if considered, overwhelmingly supports New Jersey's position. The New Jersey drafters of Article VII explained that "every interest of the State of New Jersey has been protected, all its

riparian . . . rights . . . thoroughly safeguarded and every practical difficulty between the two States settled for all time." Delaware conceded New Jersey's exclusive riparian jurisdiction when this case was last here. And New Jersey has consistently exercised riparian jurisdiction on its own side of the River, both before and after the 1905 Compact, in clear contrast to Delaware's relatively recent and sporadic attempts to assert such riparian authority.

The Court should not appoint a special master. The Compact is unambiguous and clear on its face, and the "essential facts" are not disputed by either side. Under the circumstances of this case, the Court should simply set a briefing schedule and hear and decide whether Article VII of the 1905 Compact grants exclusive State riparian jurisdiction to New Jersey on its side of the River.

I. THE CONTROVERSY IS JUSTICIABLE AND WARRANTS REVIEW.

Whether considered under the Court's retained jurisdiction in the 1935 decree, or as a new original action by New Jersey, jurisdiction is warranted here.

A. New Jersey Properly Invoked This Court's Jurisdiction Under the 1935 Decree.

Notwithstanding its assertion to the contrary, Delaware takes the position that this Court's 1935 Decree effectively "altered" or "reduced" New Jersey's rights under the 1905 Compact, "insofar as this Court's clarification of the proper boundary between the two States *necessarily affected the States' rights as addressed in the 1905 Compact.*" (Del. Br. 25 n.13 (emphasis added).). Delaware's

stated position directly conflicts with paragraph 7 of the decree, which said the "decree is made *without prejudice*" to New Jersey's rights under the Compact of 1905. (N.J. App. 16a (emphasis added).) New Jersey seeks to enforce paragraph 7 of the decree and thereby establish that the decree did not, as Delaware claims, diminish its rights under the Compact. New Jersey has properly brought this motion pursuant to the retained jurisdiction provision of paragraph 5, which allows the Court to issue a supplemental decree to "carry into effect any of the provisions" of the decree. (*Id.* 15a.)

B. The Case Presents a Serious, Ripe and Justiciable Controversy in Which New Jersey is the Real Party in Interest.

New Jersey's petition for a supplemental decree pursuant to this Court's "retained jurisdiction" may not require the same showing that otherwise would be needed to invoke the Supreme Court's original jurisdiction in a new proceeding. *Cf. Nebraska v. Wyoming*, 507 U.S. 584, 592 (1993). Nevertheless, the injury sustained by New Jersey here is of ample seriousness and magnitude to warrant an exercise of original jurisdiction, even under the standard ordinarily applied to original actions. *See Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992). By requiring permits from New Jersey landowners, and by forbidding an entire category of riparian improvements on the New Jersey side of the river, Del. Code Ann. tit. 7, §§ 7002(f), 7003, Delaware has caused direct and significant injury to New Jersey's exclusive State riparian jurisdiction guaranteed by the 1905 Compact.

An interstate compact "adapts to our Union of sovereign States the age-old treaty-making power of independent sovereign nations." *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 31 (1951) (*quoting Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938)). This Court has exercised its original jurisdiction to resolve conflicts between States concerning their respective authority under an interstate compact, both when the States disputed their boundary line, *New Jersey v. New York*, 523 U.S. 767, 771 (1998), and when, as in this case, the States disputed whether a compact gave one State exclusive riparian jurisdiction over projects extending across an undisputed boundary line. *Virginia v. Maryland*, 540 U.S. 56, 60 (2003).

New Jersey is the real party in interest in this dispute. Delaware has interfered with New Jersey's exclusive riparian jurisdiction in violation of New Jersey's rights under Article VII of the 1905 Compact; and New Jersey has a justiciable interest in protecting its ability to regulate development along its own shoreline for the general benefit and welfare of its citizens. The State is the proper plaintiff in this case. This Court found that the State, not Kansas farmers, was the real party in interest when Kansas sought damages based on crop losses attributable to Colorado's breach of the Arkansas River Compact. *Kansas v. Colorado*, 533 U.S. 1, 8-9 (2001). Colorado was likewise the proper plaintiff when it sought to protect diversions of the Vermejo River for the benefit of a Colorado corporation and future Colorado users. *Colorado v. New Mexico*, 459 U.S. 176, 182 & n.9 (1982). Such a controversy necessarily rises "above a mere question of local private right and involves a matter of state interest . . . ." *Id.* at 182 n.9 (quoting *Kansas v. Colorado*, 206 U.S. 46, 99 (1907)).

Delaware's assertion of jurisdiction presents serious and immediate consequences for the State of New Jersey. The area in question encompasses approximately twenty-nine miles of New Jersey waterfront, within which Delaware purports to forbid an entire class of riparian uses. Delaware's Coastal Zone Management Act, which it applies here, prohibits not only liquefied natural gas transfer facilities, but all bulk product transfer facilities and new heavy industry uses. Del. Code Ann. tit. 7, §§ 7002(f), 7003. Delaware would thus disallow New Jersey's authority to make its own independent determination as to the benefits of riparian uses forbidden by Delaware.[1] Moreover, Delaware seeks not only to regulate the nature of the riparian improvements appurtenant to New Jersey's waterfront, but to dictate and limit the uses to which the uplands in New Jersey may be put. (*See, e.g.*, N.J. App. 139a (refusing to allow "on-shore storage tanks essential to the operation" of the pier).)

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[1] Delaware's policy of prohibiting any proposed development it deems inappropriate for this area of New Jersey, without providing New Jersey an opportunity to review such proposals, may date to 1972. At that time, El Paso Eastern proposed construction of an LNG facility in New Jersey with a pier extending into the Delaware River within the Twelve-Mile Circle. (N.J. Supp. App. 7a-8a.) El Paso abandoned its proposal in February 1972, shortly before Delaware informed the company that the pier "would be a prohibited off-shore bulk product transfer facility." (*Id.*) El Paso never even approached New Jersey about the project. However, in response to an inquiry from his Delaware counterpart, New Jersey's Commissioner of Environmental Protection stated on March 2, 1972 that New Jersey would review the "entire project" if and when it was submitted, but that "El Paso has not made any application to this Department and we have no specific knowledge of their proposal." (Del. App. 13a.)

Delaware's suggestion that New Jersey is not injured because it could allow this category of facilities outside the Twelve-Mile Circle merely underscores the breadth of Delaware's claim and the immediacy and seriousness of the harm it poses to New Jersey. That argument recognizes that Delaware currently precludes New Jersey from using the affected area of its waterfront in ways that Delaware prohibits. Thus, the immediate impact of Delaware's actions, as characterized by Delaware itself, is to deprive New Jersey of its exclusive jurisdiction over riparian improvements for the benefit of its own citizens, and to limit development along a significant portion of New Jersey's shoreline based on interests and concerns determined solely by Delaware.

Because Delaware asserts its jurisdiction over existing projects, this controversy is ripe for review. "[T]he question of ripeness turns on 'the fitness of the issues for judicial decision' and 'the hardship to the parties of withholding court consideration.'" *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 201 (1983) (quoting *Abbott Labs., Inc. v. Gardner*, 387 U.S. 136, 149 (1967)). The dispute here is not hypothetical or conjectural, nor is the injury which it causes speculative or remote. *See Florida v. Mellon*, 273 U.S. 12, 18 (1927).

It is immaterial to the question of ripeness whether Delaware has *withheld* a permit, as it did this year from Crown Landing (N.J. App. 137a-142a), or has *required* a permit, as it did this year over the objection of Fenwick Commons, (*id.* 94a-95a, 131a-132a), and as it has done since 1971 over the objection of DuPont (*id.* 89a-92a, 111a-130a). Whether Delaware grants or withholds a permit, it is

violating New Jersey's exclusive right under Article VII "to exercise riparian jurisdiction of every kind and nature" on its "own side of the river." (*Id.* 5a.) In *Virginia v. Maryland*, 540 U.S. 56 (2003), the Court recognized that a State's mere exercise of regulatory jurisdiction may constitute an injury to another state's sovereign interests that is ripe for adjudication, regardless of whether there has been final action denying a permit. In that case, the Court granted Virginia's motion for leave to file a bill of complaint to invalidate Maryland's permit authority, despite the fact that Virginia's application for a permit was still awaiting final action by Maryland. *Id.* at 64. The Court subsequently ruled on Virginia's claims despite the fact that Maryland had issued a conditional permit in 2001, before the case was argued. *Id.*

Delaware's assertion of jurisdiction burdens development even where Delaware ultimately issues a permit. Landowners like Fenwick Commons have reluctantly acquiesced and obtained such permits as a cost of doing business. (N.J. App. 94a- 95a.) In the case of the Crown Landing project, Delaware's refusal to issue a permit has frustrated New Jersey's own regulatory review of the project by prohibiting Crown Landing from taking sediment samples from the riverbed, which the New Jersey Department of Environmental Protection, Office of Dredging and Sediment Technology (ODST), has determined is necessary to evaluate the environmental impacts from the dredging needed to construct the pier.[2] (N.J. App. 138a; N.J. Supp. App. 1a-4a.)

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[2] Contrary to Delaware's suggestion that New Jersey's ODST conceded Delaware's authority over the pier in February 2005 (Del. Br.

Delaware has thus blocked New Jersey from completing its own review of the Crown Landing project. (*Id.*)[3] New Jersey is entitled to evaluate the project on its merits, free from interference by Delaware.

Because Delaware has banned entire categories of development along twenty-nine miles of New Jersey's shoreline, the injury to New Jersey is not remote or speculative. New Jersey has a compelling interest in confirming its exclusive State riparian jurisdiction along its own shoreline so that Delaware cannot continue to infringe upon New Jersey's riparian jurisdiction under the 1905 Compact.

C. No Alternative Forum Exists.

Delaware argues that this Court should decline jurisdiction because an alternative forum might have existed where the Compact issue could have been litigated -- if Crown Landing had simply appealed the permit denial through the Delaware state court system, with possible review by certiorari in this Court of any adverse decision by the Supreme Court of Delaware. (Del. Br. 32-35.) It is

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65), ODST made clear on May 24, 2005 that "although a portion of the pier is proposed to be in Delaware, construction of the entire pier, and any associated dredging, is subject to New Jersey's exclusive review and permitting authority, and not that of Delaware." (N.J. App. 153a.)

[3] As Delaware itself points out, the issuance of federal permits will also be conditioned on the issuance of state permits. (Del. Br. 13; see also N.J. App. 136a-137a, 142a.).

undisputed, however, that New Jersey was not a party to Crown Landing's permit proceeding and Crown Landing did not litigate the Compact question. (N.J. App. 142a.) Moreover, requiring New Jersey to litigate its Compact rights in a Delaware state permit proceeding would defeat the purpose of Article VII -- which denies Delaware the authority to regulate New Jersey's riparian rights -- allowing Delaware to "unilaterally nullif[y]" the Compact. *West Virginia ex rel. Dyer v. Sims*, *supra*, 341 U.S. at 28.

Wyoming v. Oklahoma, 502 U.S. 437 (1992), is directly on point. The Court rejected the hypothetical-alternative-forum argument both because there was no "pending" forum, and because a private party's representation of the State's sovereign interest in such a hypothetical forum would be inadequate. *Id.* at 451-52. That rationale applies equally to this case.[4] Further, the concern of the dissenting justices – that Wyoming's challenge to the Oklahoma statute could have been brought by the affected mining companies "in another, more convenient, forum," *id.* at 476 – does not apply here as New Jersey asserts a violation of its own Compact rights. *See Texas v. New Mexico*, 462 U.S. 554, 569 (1983).

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[4] The two principal cases relied on by Delaware are inapposite. Unlike this case, *Arizona v. New Mexico*, 425 U.S. 794 (1976) (per curiam), involved a "pending state-court action" to which the Court could defer. *Id.* at 797. Moreover, "Arizona's interests were . . . actually being represented by one of the named parties to the suit." *Maryland v. Louisiana*, 451 U.S. 725, 743 (1981). *Illinois v. Michigan*, 409 U.S. 36 (1972), is likewise distinguishable. The Court there declined original jurisdiction because "Illinois was a party to the case decided by the Supreme Court of Michigan," and should have petitioned for certiorari. *Id.* at 36-37.

II. ARTICLE VII GRANTS EXCLUSIVE STATE RIPARIAN JURISDICTION TO NEW JERSEY ON ITS OWN SIDE OF THE RIVER.

A. The 1905 Compact Unambiguously Confers Exclusive Jurisdiction on New Jersey to Regulate Riparian Improvements Appurtenant to the New Jersey Shore of the River.

Delaware's interpretation of the 1905 Compact is wholly at odds with its plain language. Nothing in Article VII remotely suggests that Delaware could have any jurisdiction over riparian improvements on New Jersey's shoreline, any more than New Jersey could exercise riparian jurisdiction on the Delaware side. To the contrary, Article VII plainly provides, in symmetrical terms, that "[e]ach State may, on *its own side of the river*, *continue* to exercise riparian jurisdiction *of every kind and nature . . . under the laws of the respective States*." (N.J. App. 5a (emphasis added).) As New Jersey explained in its opening brief, the plain language of this Article confirmed that New Jersey would continue to exercise riparian jurisdiction over riparian improvements such as docks, wharves, and piers in the same manner to which it had been historically accustomed, free of regulation or interference by Delaware. (N.J. Br. 24-27.)

Delaware responds with an interpretation of the 1905 Compact that is contrary to its plain language, particularly when viewed in the context of the contemporaneous understanding and practice of the parties. For example, Delaware argues that much of the plain language of Article VII was intentionally ambiguous or must be ignored because the Compact was "drafted against the backdrop of an ongoing boundary dispute," so that this Court's 1934

boundary decision subsequently altered the plain meaning of the Compact. (Del Br. 45-50.) Yet this argument ignores the plain language of Article IX of the Compact, which provided that it would be "binding in perpetuity upon both of said States" (N.J. App. 6a), as well as the plain language of this Court's 1935 decree, which was "without prejudice to the rights of either state, or the rights of those claiming under either of said states, by virtue of the compact of 1905 between said states . . . ." (*Id.* 16a.)

Delaware also concedes that Article VII's use of the word "continue" is significant but then construes this term to limit the scope of New Jersey's riparian jurisdiction protected by the Compact. (Del. Br. 47-56.) This construction both conflicts with the plain language of Article VII, which broadly defined the riparian jurisdiction in question as being "of every kind and nature," (N.J. App. 5a), and ignores New Jersey's history of regulating riparian improvements on its own side of the River before and after the 1905 Compact (*see* N.J. Br. 8-10).[5] Delaware's construction also ignores

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[5] Delaware also argues that New Jersey's right to exercise riparian jurisdiction is somehow limited by the scope of improvements existing at the time of the Compact and could not possibly apply to construction of a 2,000-foot pier today. (Del. Br. 42-45, 53.) This argument again ignores that Article VII explicitly applies to riparian jurisdiction of "every kind and nature." (N.J. App. 5a.) It also ignores the scope of the improvements existing at the time of the Compact, as well as projects that clearly could have been contemplated at that time. For example, by 1905 New Jersey had issued riparian grants for one pier extending 850 feet offshore and several piers extending 400 to 500 feet offshore. (N.J. App. 32a-35a). Further, in 1905, the country was well familiar with large scale marine improvements. For example, the Panama Canal was authorized by Congress in 1902. 32 Stat. 481, ch. 1302 (June 28, 1902).

the fact that Delaware conceded New Jersey's exclusive riparian jurisdiction in this area as recently as 1958 (N.J. App. 87a-89a, 102a-110a), and that Delaware did not first attempt to regulate improvements on New Jersey's side of the River until 1971, sixty-six years after it ratified the Compact. (Del. Br. 62.)[6]

Delaware attempts to avoid the plain language of Article VII by pointing to other Articles of the 1905 Compact. For example, Delaware notes that Article IV used the word "exclusive" in referring to criminal jurisdiction over fishing violations, while that word was not used in Article VII. (Del. Br. 52.) Delaware concludes that the drafters must not have intended the riparian jurisdiction mentioned in Article VII to be "exclusive" since they knew how to use that word if they wanted to do so. (*Id.*) But the drafters also did not use the word "concurrent" to describe the riparian jurisdiction discussed in Article VII, even though that word is used four times in Article IV to describe the concurrent fishing legislation to be enacted by the States.

Article IV called for the enactment of "uniform" fishing laws immediately following ratification of the Compact, after which time such laws could be repealed or modified only by "concurrent legislation" by the States. But

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[6] Delaware's statement that it approved leases in 1962 and 1963 for two pipelines that traversed the River between New Jersey and Delaware, (Del. Br. 62), is of no relevance. A pipeline or cable that crosses from one side of the River to the other is not a riparian improvement, and, like a bridge, obviously cannot be constructed without permission from both States. Those examples have no bearing on the authority over riparian improvements appurtenant to the New Jersey shoreline.

Article IV needed to go further, particularly since *New Jersey v. Delaware I* arose out of Delaware's effort in 1877 (promptly enjoined by this Court) to arrest and prosecute New Jersey citizens. (N.J. Br. 5-6.) The drafters sought to prevent a recurrence of that controversy by providing that "Each state shall have and exercise exclusive jurisdiction within said river to arrest, try, and punish its *own* inhabitants for violation of the concurrent legislation relating to fishery herein provided for." (N.J. App. 5a (emphasis added).)

Article VII addressed the entirely different and, at the time, completely uncontroversial proposition that each State would "on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature." This language plainly meant exclusive jurisdiction; it could not be concurrent if each State had riparian jurisdiction "of every kind and nature" on "its own side" of the River.[7]

Virginia v. Maryland is again instructive. Virginia's riparian jurisdiction under Article VII of the 1785 Compact was held to be exclusive of Maryland's even though Article VII did not mention jurisdiction or use the word "exclusive." 540 U.S. at 67. Examining the other articles of the 1785

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[7] Delaware also relies in Article VIII of the Compact (Del. Br. 52), which provides that "Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, *except as herein expressly set forth.*" (N.J. App. 5a (emphasis added).) As this Court previously ruled, Article VIII reflected that fact that the 1905 Compact did not settle the boundary line. *See New Jersey v. Delaware*, 291 U.S. at 378. While acknowledging this continuing dispute, the States nevertheless expressly allocated riparian jurisdiction along the River in Article VII of the Compact.

Compact, this Court concluded that "the drafters carefully delineated the instances in which the citizens of one State would be subject to the regulatory authority of the other." *Id.* And examining Article VII of the 1785 Compact, this Court concluded that "[i]f any inference at all is to be drawn from Article Seventh's silence on the subject of regulatory authority, we think it is that each State was left to regulate the activities of her own citizens." *Id.* The same is true here. In Article VII of the 1905 Compact, it was unnecessary for the drafters to use the word "exclusive" to describe the regulation of each State's riparian rights because both States would have assumed that each would continue to regulate riparian rights on its own side.

Delaware's efforts to distinguish *Virginia v. Maryland* are unpersuasive. First, Delaware incorrectly asserts that this Court predicated Virginia's exclusive riparian jurisdiction on the "principle of equitable apportionment" (Del. Br. 73), when, in fact, this Court's decision was based on the "plain language" of the 1785 Compact. 540 U.S. at 66. Nor can Delaware distinguish the case by postulating that it "could have" been decided instead on a "Commerce Clause" theory (Del. Br. 74), when it was actually decided as a compact case. Delaware lastly tries to distinguish it as a case about mere water use, rather than about the construction of "enormous structures on the submerged lands of the river" (Del. Br. 75), ignoring that the dispute focused on the construction of a substantial water intake pipe, 10 feet in diameter, extending 725 feet into the Maryland riverbed, and capable of withdrawing more than

200 million gallons of water per day.[8] The 1785 Compact gave Virginia the right to authorize that enormous project, "free of regulation by Maryland." *Virginia v. Maryland*, 540 U.S. at 79.

B. Delaware is Not Entitled to Any Presumption Against the Relinquishment of Sovereignty Because the Boundary Was Contested When the States Entered Into the 1905 Compact.

Delaware's central argument on the merits is that it has been the true owner of the subaqueous land within the Twelve-Mile Circle up to the low-water mark on the New Jersey side since 1682, and that prior to the 1905 Compact, Delaware "[u]nquestionably" had the authority to regulate improvements extending beyond the New Jersey shoreline. (Del. Br. 36-49, 53-60.) Delaware claims to have retained the authority to regulate projects extending into its territory unless the Compact of 1905 provided otherwise in "unmistakable terms." (*Id.* 46).[9]

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[8] *See* Lodging Accompanying Reply by the Commonwealth of Virginia to the State of Maryland's Exceptions to the Report of the Special Master at L-336, *Virginia v. Maryland*, No. 129, Orig. (Mar. 31, 2003).

[9] Delaware appears to be arguing what is referred to as the "unmistakability doctrine," which holds: "'Sovereign power . . . governs all contracts subject to the sovereign's jurisdiction, and will remain intact unless surrendered in unmistakable terms.'" *Bowen* v. *Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41, 52 (1986) (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 (1982)).

The unmistakability doctrine does not apply here because the boundary between the States was disputed at the time of the Compact. In *Virginia v. Maryland*, Maryland also relied on the unmistakability doctrine, but this Court, in an opinion by Chief Justice Rehnquist, flatly rejected it:

> Maryland . . . argues that we must read Article Seventh's regulatory silence in her favor because her sovereignty over the River was "well-settled" by the time the 1785 Compact was drafted. *Maryland is doubtless correct that if her sovereignty over the River was well settled as of 1785, we would apply a strong presumption against reading the Compact as stripping her authority to regulate activities on the River. See, e.g., Massachusetts v. New York*, 271 U.S. 65, 89 (1926) ("[D]ominion over navigable waters, and property in the soil under them, are so identified with the exercise of the sovereign powers of government that a presumption against their separation from sovereignty must be indulged"). *But we reject Maryland's historical premise.*
>
> . . . Our own cases recognize that the scope of Maryland's sovereignty over the River was in dispute both before and after the 1785 Compact. . . .
>
> The mere existence of the 1785 Compact further belies Maryland's argument. After all, the 1785 Compact

> sought "to regulate and settle the jurisdiction and navigation" of the River. This endeavor would hardly have been required if, as Maryland claims, her well-settled sovereignty gave her exclusive authority to regulate all activity on the River.

540 U.S. at 67-69 (citations and footnote omitted, emphasis added).

Just as the Maryland-Virginia boundary was disputed at the time of the 1785 Compact, New Jersey and Delaware contested their boundary and jurisdiction when they signed the 1905 Compact.[10] The boundary remained in dispute until this Court's 1934 decision, at which time the Court observed "that almost from the beginning of statehood Delaware and New Jersey have been engaged in a dispute as to the boundary between them." 291 U.S. at 376.[11] As of 1905,

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[10] Similar to the 1785 Compact, the preliminary recital of the 1905 Compact refers to the "controversy [that] hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River" and noted "the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom . . . ." (*Compare* N.J. App. 1a, *with Virginia v. Maryland*, 540 U.S. at 68 (1785 Compact preamble).)

[11] Though ultimately unsuccessful, New Jersey's challenge to Penn's title was thoroughly defensible. In fact, America's leading scholar on colonial history wrote as late as 1937 that "Penn's sole title to the government and soil of the Delaware counties rested on two land leases of doubtful legality, because in 1682 the duke himself had no certain title to the region." 3 Charles M. Andrews, *The Colonial Period of American History* 295 (1937, 9th printing 1967).

therefore, neither New Jersey nor Delaware could have thought that Delaware had any "well-settled" jurisdiction extending to the New Jersey shoreline. The unmistakability doctrine has been described as "simply a rule of presumed (or implied-in-fact) intent." *United States v. Winstar Corp.*, 518 U.S. 839, 920 (1996) (Scalia, J., concurring). The presumption does not apply under the facts of this case. *See Virginia v Maryland*, 540 U.S. at 67-69.

C. Delaware Has Identified No Extrinsic Evidence Warranting Any Other Conclusion.

1. Extrinsic Evidence is Irrelevant Because the 1905 Compact is Unambiguous.

Delaware correctly states (Del. Br. 45-46) that legislative history and post-Compact extrinsic evidence, including the parties' subsequent course of performance, should be considered *only* if the Court believes that Article VII of the 1905 Compact is ambiguous. *Oklahoma v. New Mexico*, 501 U.S. 221, 236 n.5 (1991); *see also New Jersey v. New York*, 523 U.S. 767, 830-31 (1998) (Scalia, J., dissenting) ("It is hornbook contracts law that the practical construction of an ambiguous agreement revealed by later conduct of the parties is good indication of its meaning."). Because the 1905 Compact unambiguously grants New Jersey exclusive riparian jurisdiction along its own shore, extrinsic evidence is of no consequence.

2. Even If It Were Relevant, the Extrinsic Evidence Overwhelmingly Supports New Jersey.

If such extrinsic evidence is considered, it overwhelmingly supports New Jersey. The States' contemporaneous construction of the 1905 Compact and their pattern of conduct under the Compact evidence a clear understanding that Delaware had no right to regulate the construction of riparian improvements appurtenant to the New Jersey shore of the Delaware River within the Twelve-Mile Circle.

(a) The New Jersey Commissioners Believed That Article VII Gave New Jersey Exclusive Riparian Jurisdiction.

When the New Jersey Commissioners who drafted the Compact submitted their report to the New Jersey legislature in 1903, they stated that "every interest of the State of New Jersey has been protected, all its *riparian* . . . rights . . . *thoroughly safeguarded* and every practical difficulty between the two States settled *for all time*." (N.J. Br. 7; N.J. Supp. App. 28a (emphasis added).) These statements reflect the plain language of Article VII of the Compact, which protected New Jersey's "riparian" rights, and of Article IX, which provided that, upon ratification, the Compact "shall be and become binding *in perpetuity*" upon both States. (N.J. App. 6a (emphasis added).) Thus, the plain language reflects a contemporaneous understanding that even if the boundary were finally determined in Delaware's favor, Delaware could not begin regulating riparian improvements appurtenant to New Jersey's shore.

(b) Delaware Conceded New Jersey's Authority in Original, No. 11.

Delaware tries to distance itself from the statements it made here in the 1930s when it repeatedly acknowledged that the 1905 Compact protected both the "right" of New Jersey riparian owners to wharf out to the navigable channel and the "right" of the State of New Jersey to regulate the exercise of those rights. (*See* N.J. Br. 27-30.) Delaware, in fact, is unable to point to *anything* in the record in Original, No. 11, that supports its current litigating position.

Delaware attempts to blunt its prior admissions by arguing that the "scope of riparian jurisdiction in Article VII" was not at issue in the 1934 case. That is incorrect. New Jersey expressly claimed that Article VII of the 1905 Compact effectively established the boundary in the middle of the River. (*E.g.*, N.J. App. 173a-174a.) Delaware responded, successfully, that Article VII did not alter the boundary, which was left open by Article VIII. (*Id.* 186a-187a.) It was in this context that Delaware urged in its Reply Brief: "[e]ven if the Compact of 1905 be construed as ceding to the State of New Jersey *the right to determine* to whom riparian rights (i.e., wharf rights appurtenant to riparian lands) shall be granted, it would still not affect the boundary between the States in any conceivable way." (N.J. App. 237a.)

Delaware points to the "even if" qualification from this statement and argues that it shows that "Delaware was arguing in the alternative." (Del. Br. 69). This qualification was made, however, to dispute New Jersey's further claim that the Compact gave it title to the middle of the River. (N.J. App. 235a-237a.) Delaware on two other occasions

made clear that New Jersey, not Delaware, had the authority to regulate riparian rights on the New Jersey side. (*See id.* 186a (stating that Article VII was "a cession to the State of New Jersey by the State of Delaware of jurisdiction to regulate those rights"); 191a ("the Compact of 1905 ceded to the State of New Jersey all the right to control the erection of those wharves and to say who shall erect them").)

More importantly, when New Jersey argued that, if Delaware should prevail in its boundary argument, it could interfere with development along New Jersey's shoreline, Delaware expressly assured this Court that New Jersey's rights were protected by Article VII. (*Id.* 223a.) This Court effectively accepted that assurance when it established the boundary at the low-water mark on the New Jersey side, "subject to the Compact of 1905." *New Jersey v. Delaware II*, 291 U.S. at 385.

Moreover, in contrast to its current position, Delaware clearly recognized in *New Jersey v. Delaware II* that the exercise of riparian rights of property owners on the New Jersey side of the River did not depend on ownership of the subaqueous soil. Addressing this specific issue, Delaware stated to this Court:

> Plaintiff argues that the right of the citizens of New Jersey to wharf out is in some way inconsistent with or adverse to the ownership of the subaqueous soil of the Delaware River by William Penn. This contention is without merit.
>
> . . . .

> To put the matter another way, the right of the riparian owner to wharf out does not rest upon title to the subaqueous soil, and a claim to ownership of the subaqueous soil by the State of Delaware is not inconsistent with the use of such subaqueous soil by the riparian proprietor for the purpose of wharfing out. (N.J. App. 178a, 184a.)

As Delaware's own statements in *New Jersey v. Delaware II* make clear, Delaware's current litigating position is inconsistent with its earlier one. Its earlier argument about New Jersey's compact rights was intended to persuade the Master and this Court to adopt its position on the boundary. The Master and the Court did so, and New Jersey would be severely prejudiced were Delaware now permitted to disavow its earlier assurances. *See New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001) (No. 130, Orig.) (applying judicial estoppel based on New Hampshire's position in the 1970s in No. 64, Orig.).

(c) Delaware Did Not Attempt to Regulate Riparian Rights on the New Jersey Side Until 1957, When It Promptly Acknowledged That It Had No Such Authority.

New Jersey has been regulating the construction of riparian improvements on its side of the River at least since 1854. (N.J. Br. 8.) By contrast, the first documented instance that Delaware considered regulating riparian improvements on the New Jersey side was in 1957, when the Delaware State Highway Department conferred with DuPont

about whether the 1905 Compact deprived Delaware of authority to regulate a water outflow pipe. (N.J. Br. 31-32; N.J. App. 87a-89a, 102a-110a.) On the advice of its counsel that the Compact denied Delaware such authority (*id.* at 106a-07a), the Highway Department adopted a resolution stating that it "has no jurisdiction over the area mentioned" (*id.* 110).

Delaware did not try again until 1971, when Delaware and DuPont entered into a subaqueous lands lease for DuPont's Chamber Works facility. (N.J. App. 90a-92a, 115a-130a.) The Lease deferred any payments owed to Delaware until such time as a federal court issued a "final judgment" resolving Delaware's disputed title. (N.J. App. 91a, 121a.) When Delaware's Deputy Attorney General demanded payment from DuPont in 1981, asserting that this Court's 1934 decision constituted that "final judgment" (*id* 126a-127a), DuPont successfully resisted, again on the basis of the 1905 Compact and the State Highway Department's acknowledgment in 1957 and 1958 that Delaware lacked such jurisdiction (*id.* 128a-130a).

Moreover, the States' respective positions on their authority to tax riparian improvements on the New Jersey side of the River confirm New Jersey's exclusive riparian jurisdiction on its side of the River.[12] New Jersey municipalities have repeatedly taxed riparian improvements on the New Jersey shoreline extending below the low-water mark in the Twelve-Mile Circle. (*See* N.J. Br. 31; N.J. App.

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[12] A State's exercise of its taxing power is "one of the primary indicia of sovereignty." *Illinois v. Kentucky*, 500 U.S. 380, 385 (1991).

32a, 37a, 40a, 42a, 48a, 49a.) New Jersey's taxation power under the 1905 Compact was affirmed forty-three years ago in *Main Assoc's Inc. v. B&R Enters., Inc.*, 181 A.2d 541, 544 (N.J. Super. Ct. Ch. Div. 1962).

Delaware responds that it was not a party to *Main*, so that case "in no way bears on Delaware's course of performance under the Compact." (Del. Br. 66.) But Delaware fails to mention two key details. First, Delaware has not offered any evidence that it has ever taxed any riparian improvements extending into the River on the New Jersey side. Second, Delaware has expressly recognized for the past seventy years that the 1905 Compact casts doubt on its authority to levy such taxes. Following this Court's 1934 decision, Delaware enacted a law defining the boundary of the City of Wilmington as reaching the "low water mark upon the easterly side of the Delaware River." 40 Del. Laws ch. 179 (1935) (N.J. Supp. App. 13a.) But the Legislature specifically barred the City from taxing property on the New Jersey side of the River "until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905 . . . ." (N.J. Supp. App. 14a.) This limitation remains part of the charter of the City of Wilmington. *See* Code of City of Wilmington, Part I, Subpart B, § 1-1 (repeating language of 40 Del. Laws ch. 179) (N.J. Supp. App. 21a); *id.*, Subpart A, § 1-100 (defining the City as "now established in 40 Del. Laws chapter 179") (N.J. Supp. App. 15a.)

(d) Delaware's Remaining Arguments are Insufficient as a Matter of Law.

Delaware raises several other course-of-performance arguments based on New Jersey's actions or statements, none of which is persuasive. First, Delaware points to New Jersey's 1980 coastal zone management plan, which anticipated a joint effort by New Jersey and Delaware to "coordinate reviews of any proposed development that would span the interstate boundary . . . ." (N.J. App. 74a; Del. App. 83a.) Delaware fails to mention, however, that New Jersey's regulators abandoned that effort in 1994 based on their concerns "about giving a veto to Delaware as to projects that otherwise would have met New Jersey standards." (N.J. App. 76a.)

Next, Delaware notes a single instance in 1996 when the New Jersey DEP issued a waterfront development permit that required its own Division of Parks and Forestry to obtain Delaware's approval for structures that were part of a joint Delaware-New Jersey project to reestablish a historical ferry service crossing the River. (Del. Br. 62a; N.J. App. 71a, 93a-94a.) New Jersey's cooperative decision in that instance to seek Delaware's concurrence for a joint project hardly constitutes an intentional relinquishment of New Jersey's historic compact rights. *See Virginia v. Maryland*, 540 U.S. at 76-77.

Finally, Delaware misplaces its reliance on the 1954 Opinion of the New Jersey Attorney General. 1954 N.J. Op. Atty. Gen. 6. (Del. App. 69a.) Contrary to undermining New Jersey's position, that opinion reaffirmed that "the State of New Jersey has by virtue of Article VII the *complete and exclusive right* to make grants and leases of riparian lands

below low water mark on its side of the River." (*Id.* 70a (emphasis added).) The opinion also was consistent with New Jersey law allowing a grantee or lessee to dredge to the main channel. N.J. Stat. Ann. § 12:3-21 (enacted in 1891).

Delaware emphasizes the last portion of the opinion, where the Attorney General concluded that, under N.J. Stat. Ann. § 12:3-22, New Jersey could not issue a license or fix charges for dredging within the Twelve-Mile Circle where the submerged lands were not "'lands of the state' under tide waters." (*Id.* 72a-73a.) But Delaware is confusing § 12:3-22 (at issue in the 1954 opinion) with § 12:3-21, the provision allowing riparian owners to dredge out to the main channel. Section 12:3-22 is not limited to riparian owners, but generally addresses dredging activities such as mining. At the same time, section 12:3-21 makes clear that a riparian owner under a grant from New Jersey retains the right to dredge to the main channel:

> No person . . . shall dig, dredge or remove any deposits of sand or other material from the lands of the State lying under tidal waters without a license so to do first obtained as provided in section 12:3-22 of this Title . . . . ; *provided, however, that nothing in this section contained shall prevent the owner of any grant or lease from the State . . . from digging, dredging, removing, and taking sand and other material within the lines of, or in front of, such grant or lease, for the purpose of improving lands granted or leased to them . . . by the State, nor prevent such owner . . . from digging or dredging a*

> *channel or channels to the main channels, and removing and taking the material therefrom.*

N.J. Stat. Ann. § 12:3-21 (enacted 1891) (emphasis added). Contrary to Delaware's suggestion, New Jersey law since 1891 has permitted dredging necessary to reach the main channel, including within the Twelve-Mile Circle. (*See, e.g.*, N.J. App. 28a (Castagna Affidavit), 70a (1982 permit authorized dredging 200 feet beyond the mean-low water mark).)

III. THE CASE SHOULD BE BRIEFED AND ARGUED THIS TERM.

Delaware has not offered any legitimate reason to appoint a special master. Delaware says it expects to offer historical evidence about each State's riparian rights within the Twelve-Mile Circle under common law and applicable state statutes -- as well as evidence of the historical exercise of those rights -- prior to the 1905 Compact." (Del. Br. 76.) But Special Master Rawls already compiled the evidence of the riparian grants and improvements on the New Jersey side prior to 1931.[13] Delaware also says that it would put forward evidence of "each States' intent at the time it signed the Compact." (Del. Br. 76.) But that evidence too was compiled by Special Master Rawls. (Record, No. 11, Orig., Pl. Ex. 161 at 25-45, Ex. 162 at 13-20.)

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[13] For a chronological listing of the various riparian grants, with cross-references to the record compiled by Special Master Rawls, *see* N.J. App. 30a-47a (Affidavit of Richard G. Castagna).

Lastly, Delaware says it would offer "course-of-performance evidence from the 100 years that have passed since the signing of the Compact." (Del. Br. 75). But Special Master Rawls already heard evidence concerning the parties' "course-of-performance" prior to 1933. And the course-of-performance evidence set out by New Jersey and Delaware in this round of briefing -- which Delaware concedes is irrelevant to interpreting an *unambiguous* Compact -- demonstrates that there is nothing of consequence in Delaware's favor that could materially change the conclusion that Article VII of the 1905 Compact granted New Jersey exclusive riparian jurisdiction on its own side of the River.

While it is true that this Court frequently appoints a special master in original action proceedings, it has declined to do so when the "essential facts" were not in dispute, *California ex rel. State Lands Comm'r v. United States*, 457 U.S. 273, 278 (1982), or when the Court could decide the case as a matter of law, *New Hampshire v. Maine*, 532 U.S. at 756. Both of those considerations apply here. Delaware has not identified any material facts upon which the States disagree -- Delaware and New Jersey simply disagree about the legal conclusions to be drawn from those facts. Under the unique circumstances of this case -- where the question is one of Compact construction, an extensive record compiled by a special master already exists, and the Court has recently issued an opinion addressing the key legal issues -- there is no need to appoint another special master.

CONCLUSION

The Court should grant New Jersey's motion to reopen and set a briefing schedule allowing this case to be argued and decided this term.

Respectfully submitted,

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Attorney General

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* *Counsel of Record*

November 8, 2005

APPENDIX 43 – LETTER OF DAVID RISILIA, NEW JERSEY OFFICE OF DREDGING AND SEDIMENT TECHNOLOGY, TO DAVID BLAHA, DATED OCTOBER 19, 2005.

STATE OF NEW JERSEY
Department of Environmental Protection
Site Remediation Program
Office of Dredging and Sediment Technology
P.O. Box 028
Trenton, New Jersey 08625
(609) 292-1250
FAX (609) 777-1914

RICHARD J. CODEY
Acting Governor

BRADLEY M. CAMPBELL
Commissioner

October 19, 2005

Mr. David Blaha
Environmental Resources Management
200 Harry S. Truman Parkway Suite 400
Annapolis, MD 21401

RE: Sediment Sampling Concurrence for BP/Crown Landing LNG Import Terminal Waterfront Development Permit Application
File No. 0809-02-0011.1 WFD 050001
Location: Logan Township, Gloucester County

Dear Mr. Blaha:

The Office of Dredging and Sediment Technology (ODST) is responding to recent inquires made by you and the other

BP representatives, who have sought guidance on the Department's dredge material characterization requirements as they apply to the subject Waterfront Development Permit application.

Approximately 800,000 yd^3 of material is proposed to be hydraulically and mechanically dredged to a project depth of -40' MLW plus -2' overdredge within the currently proposed LNG ship berth located in the Delaware River. The proposed disposal site has been identified as the Weeks/White's Rehandling Basin located in Logan Township, Gloucester County, New Jersey.

On December 28, 2004, via e-mail, the OTST conditionally accepted an electronically submitted revised sediment core location proposal submitted by Weston Solutions. Subsequently, Weston Solutions submitted a Revised Sediment Sampling and Analysis Plan (SAP) dated January 2005.

The subject SAP proposes to collect twelve sediment cores at the locations noted on the plan entitled "SAMPLE LOCATIONS PLAN, BP, BATHYMETRY MAP CROWN LANDING, LLC LOGAN TOWNSHIP GLOUCESTER COUNTY, NEW JERSEY" prepared by Weston Solutions, dated August 20, 2004 and last revised December 9, 2004. Subsequent to sample collection, each sample will be separated into four zones relative to specified depths (as depicted on table 5 of the referenced report) and separated into aliquots. This will yield a total of 38 samples. Each of these aliquots will be discretely analyzed following approved methods for the requisite physical and chemical parameters.

The ODST has reviewed the materials submitted and determined that the proposed SAP is consistent with the protocol found in the Department's Technical Manual entitled *"The Management and Regulation of Dredging Activities and Dredged Material in New Jersey's Tidal Waters"* (Dredging Manual), dated October 1997. The proposed SAP must be conducted to enable the Department to review this project.

The Department requires sediment characterization of all materials to be dredged in accordance with the Rules on Coastal Zone Management specifically, N.J.A.C. 7:7E-7.12 – Dredged Material Placement On Land. This rule requires that: *Dredged material placement on land is conditionally acceptable provided that the use is protective of human health, groundwater quality, and surface water quality, and manages ecological risks.*

Given the significant quantity of material proposed to be dredged as part of this project, adequate characterization is an essential component of the application review process. The application was found deficient on February 4, 2005, and again on July 15, 2005, because in part, the requisite sediment data had not been received from the applicant. Accordingly, you have been previously advised that this application will not be deemed complete for review and for a public hearing until the Department receives a complete data package in accordance with the SAP.

Should you have any questions concerning this letter or the information required by the Dredging Manual, you may contact me at (609) 292-9342.

Sincerely,

/S/
David Q. Risilia
Project Manager, Office of Dredging
and Sediment Technology

c: Cecelia Oswald, Weston
Laurie Beppler, BP
Rachel Horowitz, DAG

APPENDIX 44 - LETTER OF DAVID R. KEIFER, DELAWARE PLANNING OFFICE, TO HON. RICHARD SULLIVAN, COMMISSIONER, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, DATED FEBRUARY 17, 1972.

February 17, 1972

Hon. Richard Sullivan
Commissioner
Dept. of Environmental Protection
P.O. Box 1390
Trenton, N. J. 08625

Dear Mr. Sullivan:

RE: El Paso Eastern Company

Please find a letter that we received from the subject firm for a status decision under our Coastal Zone Act. Before I render a decision telling them whether they are prohibited or need a permit or do not fall within the scope of the Act, I would like to have your reaction to their proposal. In general terms, do you control projects of this type under New Jersey law at this time. If so, have you approved the project or will you?

I would like to receive New Jersey's views on the project since a part of the project would be located in New Jersey but the pier which is necessary for the project to be undertaken is located in Delaware. In addition to getting your reaction to the subject project, I think it would be helpful if we could establish a system of communications for other projects of this type that will undoubtedly develop.

Appendix 44

If you have any questions or would like to discuss the project, please call me.

Sincerely,

David R. Keifer
Director

DRK:ams

Encl.

APPENDIX 45 - LETTER OF DAVID R. KEIFER, DELAWARE PLANNING OFFICE, TO BARRY HUNSAKER, VICE PRESIDENT, EL PASO EASTERN COMPANY, DATED MARCH 17, 1972.

March 17, 1972

CERTIFIED MAIL No. 879820

Mr. Barry Hunsaker
Vice President
El Paso Eastern Company
2727 Allen Parkway
Houston, Texas 77019

Dear Mr. Hunsaker:

This is in reply to your letter of March 3, 1972, on the subject of the pier for your proposed liquified natural gas terminal and your request regarding my letter of February 23, 1972, rendering a decision on that project proposal under the Coastal Zone Act.

Following our meeting where you outlined the project, in your letter of December 21, 1971, your stated, "El Paso Eastern Company will, therefore, seek approval for the installation and operation of the terminal from the states of Delaware and New Jersey." In that letter you also noted that I had suggested that you write to me concerning the project so that I could consider it and comment on it in the context of the Coastal Zone Act. My comment on the project was the status decision in my letter of February 23, 1972.

In your letter of March 3, 1972, you said that it was decided a few days prior to receiving my letter of February 23, 1972,

to abandon the project. Certainly you have the right to abandon the project. However, I do not feel that I can withdraw my status decision. Since, as you say, the decision to abandon this project was made prior to your having any knowledge of my status decision the reason for abandoning the project cannot be my decision. It would seem to be illogical to expect an appeal from a decision prohibiting a project which had previously been voluntarily abandoned. Your failure to appeal my status decision is understandable by the logic of the situation, rather than as an acquiesence to the decision.

If I should now withdraw my decision and you decided at some time to go ahead with this project, you would already know my status decision and would, therefore, have more than the time specified by the Act and more time than allowed to all other applicants to prepare your appeal.

The Coastal Zone Act provides that a final decision of the State Planner can be appealed. A status decision that a project is prohibited in the coastal zone is a final decision; otherwise it could not be appealed. My decision in this letter denying your request to withdraw the status decision of February 23, 1972, is not covered by appeal provisions of the law. I believe that my decision here is proper under terms of the Coastal Zone Act.

Sincerely,

David r. Keifer
Director

DRK:ams

APPENDIX 46 – 40 DELAWARE LAWS CHAPTER 179 (1935)

40 Del. Laws ch. 179 (1935)

WILMINGTON
AN ACT RELATING TO THE
BOUNDARIES OF THE MAYOR
AND COUNCIL OF WILMINGTON

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of each Branch thereof concurring therein):

Section 1. That Section 1 of Chapter 207, Volume 17, Laws of Delaware, approved April 13, A. D. 1883, and all Acts amendatory thereof or supplemental thereto, be and the same are hereby further amended by striking out said Section and inserting in lieu thereof the following:

Section 1. The City of Wilmington shall be bounded as follows:

BEGINNING at a monument upon the present westerly bank of the Delaware River, said monument being located 2688.63 feet easterly from the extension of the center line of Todds Lane (as the latter is established between Bowers Street and Edge Moor Avenue) measured perpendicularly thereto, and 4392.47 feet southerly from the center line of Edge Moor Avenue (as the latter is established between Todds Lane and Eastlawn Avenue) measured perpendicularly thereto; thence northwesterly on a direct line towards the monument located at the intersection of the center lines of Todds Lane and Edge Moor Avenue, a

distance of 3200 feet more or less to its intersection with a line drawn perpendicularly to Market Street (as the latter is at present established between Thirtieth and Thirty-sixth Streets) through a point 77 feet northeasterly from the center line of Thirty-sixth Street, measured along the said center line of Market Street; thence northerly perpendicular to Market Street as aforesaid 5500 feet more or less to the northwesterly side of Market Street as the same is established at 65 feet 6 inches in width; thence northeasterly along the said northwesterly side of Market Street 2500 feet more or less to its intersection with the southwesterly property line of the Diamond State Amusement Company, said intersection being approximately 730 feet northeasterly from the center line of Forty-third Street, measured along the said side of Market Street; thence north 23 degrees 35 minutes west, along the said property line, a distance of 524.31 feet more or less to a concrete monument; thence north 19 degrees 12 minutes west, along the same property line, a distance of 823.3 feet to a corner of said property; thence north 68 degrees 28 minutes east continuing along the property division line 57.60 feet to a point; thence south 57 degrees 21 minutes east along the property division line 470.2 feet to a point; thence north 26 degrees 26 minutes east along the property division line 264 feet to a point; thence north 18 degrees 1 minute east along the property division line 369.6 feet to a point; thence north 3 degrees 53 minutes east along the property division line 220 feet more or less to the center line of Talley Road, thence northwesterly along the center line of said Talley Road following the various courses and distances thereof to its intersection with the center line of Miller Road; thence southwesterly along the center line of Miller Road following its various courses and distances to

its intersection with a line drawn parallel to Thirty-seventh and Thirty-eighth Streets and midway between the said Streets; thence southeasterly parallel to Thirty-seventh and Thirty-eighth Streets and midway between them 1050 feet more or less to a point midway between Harrison and Franklin Streets, as the latter are at present established upon the official map or plan of the City of Wilmington; thence southwesterly along a line midway between Harrison and Franklin Streets 1000 feet, more or less to a point distant 600 feet northeasterly from the northeasterly side of 32nd Street measured at right angles thereto; thence northwesterly parallel to 32nd Street and distant 600 feet northwesterly therefrom 750 feet, more or less, to the northwesterly side of Miller Road; thence southwesterly along the said side of Miller Road 650 feet more or less to the southwesterly side of 34th Street extended (as the same is established between Market and Van Buren Streets; thence northwesterly along the said extension of the said southwesterly side of Thirty-fourth Street 300 feet more or less to the center line of the right of way of the Baltimore & Ohio Railroad); thence in a southwesterly direction following the said center line of the Baltimore & Ohio Railroad right of way 4100 feet more or less to the center line of 18th Street extended, as the latter is established southeast of Broom Street; thence westerly at right angles to Concord Avenue and along the present City boundary line 1600 feet more or less to the center line of Brandywine Creek; thence following along the center line of Brandywine Creek in a northerly and westerly direction 7800 feet more or less to its intersection with the extension of the easterly side of Rising Sun Lane; thence southwesterly along the said side of Rising Sun Lane 2600 feet more or less to a point distant 150 feet southwesterly

from the southwesterly side of Pennsylvania Avenue measured at right angles thereto; thence southeasterly and parallel to the said side of Pennsylvania Avenue 1900 feet more or less to the northwesterly side of Greenhill Avenue; thence southwesterly along the said side of Greenhill Avenue 1950 feet more or less to the northeasterly side of 7th Street; thence northwesterly along the said side of 7th Street extended 2750 feet more or less to the center line of DuPont Road; thence southerly along the center line of DuPont Road 2200 feet more or less to the southerly side of Lancaster Avenue extended, as the latter is established between Union Street and Greenhill Avenue; thence southeasterly along the said side of Lancaster Avenue, extended, 2100 feet more or less to the southeasterly side of Greenhill Avenue extended; thence southwesterly along the said side of Greenhill Avenue extended 600 feet more or less to the center line of Linden Street extended, as the latter is established between Van Buren and Union Streets; thence southeasterly along the center line of Linden Street extended 1100 feet more or less to the center line of Woodlawn Ave. extended, as the latter is established between Lancaster and Pennsylvania Avenue; thence southwesterly along the said center line of Woodlawn Avenue extended 2700 feet more or less to the northerly side of the right of way of the P. & R. Railroad; thence southeasterly along the said northerly side of the right of way of the P. & R. Railroad 1400 feet more or less to a point on an extension of the mid distant line between Lincoln and Union Streets; thence northeasterly along said mid distant line and parallel to Union Street 1700 feet more or less to the present City boundary line; thence southerly along the present City boundary line 2800 feet more or less to the center line of Maryland Avenue; thence southerly

continuing along the present City boundary line 2200 feet more or less to the center line of the right of way of the main line of the Pennsylvania Railroad; thence northeasterly along said right of way center line and along the present City boundary line about 2900 feet to the westerly side of Beech Street extended, as the latter is laid out southerly from and at right angles to Maryland Avenue; thence southerly along the said side of Beech Street extended and along the present City boundary line 2800 feet more or less to a point distant 450 feet southwesterly from the southwesterly side of "F" Street measured at right angles thereto; thence southeasterly parallel to "F" Street 7800 feet more or less to the southeasterly side of the right of way of the New Castle Branch of the P. B. & W. Railroad; thence in a southeasterly direction along the said right of way of the New Castle Branch of the P. B. & W. Railroad to its intersection with the northerly side of the right of way of the P. & R. Railroad; thence south 37 degrees 28 minutes .ast along the said northerly side of the right of way of the P. & R. Railroad (as the latter is established upon its plans between Stations 155 and 160) and continuing thence south 37 degrees 28 minutes east across the Delaware River to low water mark upon the easterly side of the Delaware River; thence northeasterly along the said low water line of the easterly side of the Delaware River to a point due east of the monument first mentioned upon the westerly bank of the said river; thence due westerly and re-crossing the Delaware River to the monument at the place of BEGINNING.

Within the limits of the territory by this Act included within and made part of the City of Wilmington, The Mayor and Council of Wilmington shall be and is

hereby vested with all the powers, rights, privileges and immunities which by law appertain and belong to it as a municipal corporation, and all the laws or ordinances and regulations in force within the limits of the City of Wilmington, as heretofore existing, and not locally inapplicable, shall be extended and applied to the territory comprised within the boundaries as set forth herein.

The real estate by this Act added to and included within the boundaries of the City of Wilmington, and all persons now or hereafter residing within the said boundaries shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said City, except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled "New Jersey v. Delaware", reported in 291 U. S. 361. The word "determination" as herein used may refer either to agreement between the said States or to a final Court adjudication.

Approved April 11, 1935.

APPENDIX 47 – WILMINGTON CITY CODE ADOPTED JUNE 17, 1993, SECTIONS 1-100 AND 1-1

WILMINGTON CITY CODE

Published by Order of the City Council

Adopted June 17, 1993
Effective July 1, 1993

Published by Municipal Code Corporation
Tallahassee, Florida 1993

* * *

PART I

CHARTER AND RELATED LAWS

Subpart A. CHARTER

ARTICLE I. INCORPORATION; POWERS OF CITY GENERALLY

Sec. 1-100. Incorporation.

The inhabitants of the City of Wilmington, within the corporate limits as now established in 40 Delaware Laws, Chapter 179, as amended by 46 Delaware Laws, Chapter 236, or as hereinafter established in the manner provided by law, shall continue to be a municipal corporation and body

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politic under the style and name of "The City of Wilmington," and shall hereinafter be referred to as the "city."

* * *

Subpart B. RELATED LAWS

Title 1 GENERAL PROVISIONS

Sec. 1-1. Corporate boundaries described; powers of city generally, etc.

The city shall be bounded as follows:

Beginning at a monument upon the present westerly bank of the Delaware River, said monument being located 2688.63 feet easterly from the extension of the center line of Todds Lane (as the latter is established between Bowers Street and Edge Moor Avenue) measured perpendicularly thereto, and 4392.47 feet southerly from the center line of Edge Moor Avenue (as the latter is established between Todds Lane and Eastlawn Avenue) measured perpendicularly thereto; thence northwesterly on a direct line towards the monument located at the intersection of the center lines of Todds Lane and Edge Moor Avenue, a distance of 3,200 feet more or less to its intersection with a line drawn perpendicularly to Market Street (as the latter is at present established between 30th and 36th Streets) through a point 77 feet northeasterly from the center line of 36th Street, measured along the said center line of Market Street; thence northerly perpendicular to Market Street as aforesaid 5500 feet more or less to the northwesterly side of Market

Street as the same is established at 65 feet 6 inches in width; thence northeasterly along the said northwesterly side of Market Street 2500 feet more or less to its intersection with the southwesterly property line of the Diamond State Amusement Company, said intersection being approximately 730 feet northeasterly from the center line of Forty-third Street, measured along the said side of Market Street; thence north 23 degrees 35 minutes west, along the said property line, a distance of 524.31 feet more or less to a concrete monument; thence north 19 degrees 12 minutes west, along the same property line, a distance of 823.3 feet to a corner of said property; thence north 68 degrees 28 minutes east continuing along the property division line 57.60 feet to a point; thence south 57 degrees 21 minutes east along the property division line 470.2 feet to a point; thence north 26 degrees 26 minutes east along the property division line 264 feet to a point; thence north 18 degrees 1 minute east along the property division line 369.6 feet to a point; thence north 3 degrees 53 minutes east along the property division line 220 feet more or less to the center line of Rockwood Road, thence northwesterly along the center line of said Rockwood Road following the various courses and distances thereof to its intersection with the center line of Miller Road; thence southwesterly along the center line of Miller Road following its various courses and distances to its intersection with a line drawn parallel to Thirty-seventh and Thirty-eighth Streets and midway between the said Streets; thence southeasterly parallel to Thirty-seventh and Thirty-eighth Streets and midway between them 1050 feet more or less to a point midway between Harrison and Franklin Streets, as the latter are at present established upon the official map or plan of the city, thence southwesterly along a line midway between Harrison and Franklin Streets 1000 feet, more or

less to a point distant 600 feet northeasterly from the northeasterly side of 32nd Street measured at right angles thereto; thence northwesterly parallel to 32nd Street and distant 600 feet northwesterly therefrom 750 feet, more or less, to the northwesterly side of Miller Road; thence southwesterly along the said side of Miller Road 650 feet more or less to the southwesterly side of 34th Street extended (as the same is established between Market and Van Buren Streets; thence northwesterly along the said extension of the said southwesterly side of Thirty-fourth Street 300 feet more or less to the center line of the right of way of the Baltimore & Ohio Railroad); thence in a southwesterly direction following the said center line of the Baltimore & Ohio Railroad right of way 4100 feet more or less to the center line of 18th Street extended, as the latter is established southeast of Broom Street; thence westerly at right angles to Concord Avenue and along the present city boundary line 1600 feet more or less to the center line of Brandywine Creek; thence following along the center line of Brandywine Creek in a northerly and westerly direction 7800 feet more or less to its intersection with the extension of the easterly side of Rising Sun Lane; thence southwesterly along the said side of Rising Sun Lane 2600 feet more or less to a point distant 150 feet southwesterly from the southwesterly side of Pennsylvania Avenue measured at right angles thereto; thence southeasterly and parallel to the said side of Pennsylvania Avenue 1900 feet more or less to the northwesterly side of Greenhill Avenue; thence southwesterly along the said side of Greenhill Avenue 1950 feet more or less to the northeasterly side of 7th Street; thence northwesterly along the said side of 7th Street extended 2750 feet more or less to the center line of DuPont Road; thence southerly along the center line of DuPont Road

2200 feet more or less to the southerly side of Lancaster Avenue extended, as the latter is established between Union Street and Greenhill Avenue; thence southeasterly along the said side of Lancaster Avenue, extended, 2100 feet more or less to the southeasterly side of Greenhill Avenue extended; thence southwesterly along the said side of Greenhill Avenue extended 600 feet more or less to the center line of Linden Street extended, as the latter is established between Van Buren and Union Streets; thence southeasterly along the center line of Linden Street extended 1100 feet more or less to the center line of Woodlawn Ave. extended, as the latter is established between Lancaster and Pennsylvania Avenue; thence southwesterly along the said center line of Woodlawn Avenue extended 2700 feet more or less to the northerly side of the right of way of the P. & R. Railroad; thence southeasterly along the said northerly side of the right of way of the P. & R. Railroad 1400 feet more or less to a point on an extension of the mid distant line between Lincoln and Union Streets; thence northeasterly along said mid distant line and parallel to Union Street 1700 feet more or less to the present city boundary line; thence southerly along the present city boundary line 2800 feet more or less to the center line of Maryland Avenue; thence southerly continuing along the present city boundary line 2200 feet more or less to the center line of the right of way of the main line of the Pennsylvania Railroad; thence northeasterly along said right of way center line and along the present city boundary line about 2900 feet to the westerly side of Beech Street extended, as the latter is laid out southerly from and at right angles to Maryland Avenue; thence southerly along the said side of Beech Street extended and along the present city boundary line 2800 feet more or less to a point distant 450 feet southwesterly from the southwesterly side of "F" Street

measured at right angles thereto; thence southeasterly parallel to "F" Street 7800 feet more or less to the southeasterly side of the right of way of the New Castle Branch of the P. B. & W. Railroad; thence in a southeasterly direction along the said right of way of the New Castle Branch of the P. B. & W. Railroad to its intersection with the northerly side of the right of way of the P. & R. Railroad; thence south 37 degrees 28 minutes east along the said northerly side of the right of way of the P. & R. Railroad (as the latter is established upon its plans between Stations 155 and 160) and continuing thence south 37 degrees 28 minutes east across the Delaware River to low water mark upon the easterly side of the Delaware River; thence northeasterly along the said low water line of the easterly side of the Delaware River to a point due east of the monument first mentioned upon the westerly bank of the said river; thence due westerly and re-crossing the Delaware River to the monument at the place of beginning.

Within the limits of the territory by this section included within and made part of the city, the city shall be and is hereby vested with all the powers, rights, privileges and immunities which by law appertain and belong to it as a municipal corporation, and all the laws or ordinances and regulations in force within the limits of the city, as heretofore existing, and not locally inapplicable, shall be extended and applied to the territory comprised within the boundaries as set forth herein.

The real estate by this section added to and included within the boundaries of the city, and all persons now or hereafter residing within the said boundaries shall be subject to assessment for municipal taxes in the same manner and

subject to the same rights, rules and restrictions as in other cases within the said city, except that no property situated within that part of the city which shall have become a part of the said city by virtue of this section shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled "New Jersey v. Delaware," reported in 291 U.S. 361. The word "determination" as herein used may refer either to agreement between the said states or to a final court adjudication.

The boundaries of the city be further extended to include the territory bounded and described as follows, to wit:

Beginning at the intersection of the westerly side of Lincoln Street at 60 feet wide with the southerly side of Oak Street at 50 feet wide; thence easterly along the southerly side of Oak Street 209 feet, 6 inches more or less to a point in the city line; thence, northerly along the said city line, crossing the beds of Oak Street and Lincoln Street, 265 feet, 2 inches more or less to a point in the westerly side of Lincoln Street; thence, southerly along the westerly side of Lincoln Street 162 feet, 6 inches to the point and place of beginning.

Also, beginning at a point in the northeasterly side of Bowers Street (at 60 feet wide), said point being located the two following courses and distances from the intersection of the southeasterly side of Bowers Street (at 60 feet wide) with the northeasterly side of East 35th Street (at 50 feet wide):

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(1) Along the said southeasterly side of Bowers Street as aforesaid in a northeasterly direction 123 feet more or less to a point in the presently existing boundary line of the city and Brandywine Hundred; (2) thence thereby in a northwesterly direction 60 feet to the northeasterly side of Bowers Street as aforesaid; thence from said point of beginning in a northeasterly direction and along the northeasterly side of Bowers Street extended crossing a twenty-five-foot-wide right-of-way formerly of the Pennsylvania Railroad and now assigned to Delwatco, Inc., a Delaware corporation and crossing the Governor Printz Boulevard (at 100 feet wide) a distance of 1,061.30 feet more or less to a point; thence southwesterly by a line deflecting to the right of the last mentioned course by an angle of 133 degrees, 45 minutes, 10 seconds, crossing the Governor Printz Boulevard and crossing a 36-inch interceptor sewer a distance of 543.83 feet more or less to a point; thence in a southwesterly direction by a line deflecting to the right of the last mentioned course by an angle of 46 degrees, 14 minutes, 50 seconds, crossing the aforementioned 25-foot-wide right-of-way formerly of the Pennsylvania Railroad a distance of 685.21 feet more or less to a point in the said presently existing boundary line between the city and Brandywine Hundred; thence thereby in a northwesterly direction 392.10 feet to the point and place of beginning; containing therein approximately 7.549 acres more or less.

Also, beginning at the intersection of the center line of Miller Road with the center line of 43rd Street extension also known as Lea Boulevard at 100 feet wide; thence from said point and place of beginning and along the center line of Miller Road south 55 degrees, 30 minutes west 595.95 feet to a point; thence north 34 degrees, 45 minutes west 144.24

feet to a concrete monument on the southerly side of the Baltimore and Ohio Railroad Co. right-of-way; thence along said railroad right-of-way north 61 degrees 31 minutes east 426.27 feet to a concrete monument; thence continuing along said railroad right-of-way north 57 degrees, 00 minutes, 30 seconds east 322.82 feet to a concrete monument; thence south 40 degrees, 35 minutes, 30 seconds east 71.5 feet to a concrete monument on the northerly side of Miller Road; thence along said side of Miller Road south 55 degrees, 30 minutes west 156.73 feet to a concrete monument; thence south 34 degrees, 30 minutes east 20.00 feet to the point and place of beginning, containing therein 1.828 acres.

Beginning at a point located on the easterly side of a 40 foot wide easement in line of lands now or formerly of Ahmad E. Amer, said point being located the six following courses and distances from the intersection of the easterly side of Marsh Road and the centerline of Beech Street: (1) along line of lands now or formerly of Frank B. Carpenter Realty Co. and along the easterly side of Marsh Road, south 5 degrees 22 minutes, west, 44.35 feet to a point; [(2)] continuing along said line of lands now or formerly of Frank B. Carpenter Realty Co., south 82 degrees 09 minutes east, 30.02 feet to a point; (3) continuing along the said line of lands now or formerly of Frank B. Carpenter Realty Co., south 8 degrees 52 1/2 minutes west, 77.97 feet to a point in line of lands now or formerly of Peter A. Papa, Jr., et ux.; (4) thence along said lands of Peter A. Papa, Jr., et ux., south 5 degrees 44 minutes 30 seconds west, 11.77 feet to a point; (5) thence continuing along said lands of Peter A. Papa, Jr., et ux., south 8 degrees 52 1/2 minutes east, 382.29 feet to a point in line of lands now or formerly of Ahmad E. Amer; (6) thence thereby north 27 degrees 17 1/2 minutes west, 13.56 feet to

the point and place of beginning, which point is located on the easterly side of a 40 foot wide easement and is also in the dividing line between the City of Wilmington and Christiana Hundred, New Castle County; thence from said point of beginning, continuing along the dividing line between the City of Wilmington and Christiana Hundred, north 27 degrees 17 1/2 minutes west, 549.13 feet to a point in line of lands now or formerly of Delmarva Power & Light Co.; thence thereby north 82 degrees 09 minutes west, 621.79 feet to a point located on the easterly side of the Mill Creek Extension of the W.&N.R.R. Railroad; thence thereby the two following courses and distances: (1) south 12 degrees 19 minutes west, 903.48 feet to a point; and (2) south 12 degrees 21 minutes 30 seconds west, 730.03 feet to a point in other lands now or formerly of Delmarva Power & Light Co.; thence thereby the seven following courses and distances: (1) south 77 degrees 38 minutes 30 seconds east, 539.63 feet to a point located on the westerly side of a 40 foot wide private right-of-way; (2) continuing along said private right of way along the arc of a curve to the right in a southerly direction having a radius of 481.50 feet, an arc distance of 49.58 feet to a point; (3) continuing along said private right-of-way, south 0 degree 27 minutes 10 seconds west, 285.46 feet to a point; (4) continuing along said private right-of-way, south 1 degree 19 minutes 50 seconds west, 963.92 feet to a point; (5) south 74 degrees 15 minutes east, 65.18 feet to a point; (6) thence south 9 degrees 19 minutes west, 330.29 feet to a point; (7) south 17 degrees 47 minutes west, 263.11 feet to a point located on the northerly side of the Delaware River Extension of the W.&N.R.R. Railroad; thence thereby the two following courses and distances: (1) along the arc of a curve to the left in an easterly direction having a radius of 686.78 feet, an arc distance of 34.24 feet

to a point, which arc is subtended by a chord bearing south 82 degrees 38 minutes 48 seconds east, 34.24 feet; (2) south 84 degrees 4 1/2 minutes east, 17.28 feet to a point located in other lands now or formerly of Delmarva Power & Light Co.; thence thereby the two following courses and distances: (1) north 17 degrees 47 minutes west, 698.27 feet to a point; (2) north 84 degrees 34 1/2 minutes east, 680 feet to a point on the low-water line of the Christina River; thence following the meanderings thereof, 864 feet plus or minus, to a point in line of lands now or formerly of Ahmad E. Amer, said point being the following courses and distances from the last mentioned point: (1) north 1 degree 00 minute east, 770.28 feet to a point; (2) north 2 degrees 17 1/4 minutes west, 87.72 feet; thence along line of lands now or formerly of Ahmad E. Amer, the 12 following courses and distances: (1) north 89 degrees 01 minutes west, 62.53 feet to a point; (2) south 2 degrees 17 1/4 minutes east, 32 feet to a point; (3) north 89 degrees 01 minutes west, 54 feet to a point; (4) north 64 degrees 05 1/2 minutes west, 35.95 feet to a point; (5) north 89 degrees 01 minute west, 395.14 feet to a point; (6) north 1 degree 1 1/2 minutes east, 324.18 feet to a point; (7) south 88 degrees 58 1/2 minutes east, 13.56 feet to a point; (8) north 1 degree 1 1/2 minutes east, 183.64 feet to a point; (9) along the arc of a curve having a radius of 67.24 feet, an arc distance of 12.98 feet to a point, which arc is subtended by a chord bearing north 43 degrees 35 minutes 07 seconds east, 12.96 feet; (10) north 49 degrees 07 seconds east, 255.17 feet to a point; (11) along the arc of a curve to the right having a radius of 121.89 feet, an arc distance of 85.61 feet, which arc is subtended by a chord bearing north 28 degrees 59 minutes 45 seconds east, 83.86 feet; (12) north 8 degrees 52 1/2 minutes east, 709.39 feet to point and place of beginning. Be the contents thereof what they may.

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Also, all that certain piece, parcel or tract of land situate in Brandywine Hundred, New Castle County and State of Delaware, being the portion of Riverside Hospital that is located in Brandywine Hundred containing 1.175 acres, more or less, as shown on a Plan prepared by Howard L. Robertson, Inc., entitled "Osteopathic Hospital Association of Delaware, Riverside Hospital," dated December 12, 1985, and being more particularly bounded and described as follows, to wit: Beginning at the point of intersection of the northwesterly side of Franklin Place (at 80 feet wide) with the northeasterly side of Thirty-Seventh Street (at 80 feet wide); thence from said point of beginning by the aforementioned northeasterly side of Thirty-Seventh Street, north 22 degrees, 19 minutes, 30 seconds west, 615.91 feet to a point; thence by line of lands, now or formerly, of St. Nicholas Church, north 61 degrees, 05 minutes, 00 seconds east, 83.05 feet to a point; thence passing through Riverside Hospital property along the division line between Brandywine Hundred and the City of Wilmington, south 22 degrees, 19 minutes, 30 seconds east, 625.41 feet to a point in the aforementioned northwesterly side of Franklin Place; thence thereby south 67 degrees, 39 minutes, 00 seconds west, 82.50 feet to the place of beginning, containing within said bounds 1.175 acres, be the same, more or less.

(40 Del. L. ch. 179, § 1; 46 Del. L. ch. 236, § 1; Ord. No. 68-090, § 1; Ord. No. 71-045, § 1; Ord. No. 79-045, §§ 1, 2, 7-26-79; Ord. No. 88-001, 3-7-88; Ord. No. 88-102, § 4, 1-12-89)

APPENDIX 48 – REPORT OF NEW JERSEY COMMISSIONERS, MARCH 16, 1903

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 17th, 1903.

To the House of Assembly:

I have the honor to transmit herewith the report of the Commissioners appointed to confer with like Commissioners from the State of Delaware upon the boundary line between the States of New Jersey and Delaware.

Respectfully,
FRANKLIN MURPHY,
Governor.

To the Senate and General Assembly of the State of New Jersey:

The undersigned Commissioners, appointed by joint resolution of the Legislature, approved March 5th, 1903, to meet with similarly appointed Commissioners from the State of Delaware, to frame a compact, or agreement, between the said States, and legislation consequent thereon, to be submitted to the Legislatures of said two States, for action thereon, looking to the amicable termination of the suit between said States now pending in the Supreme Court of the United States, and final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River, hereby report that on

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Thursday, the 12th day of March, and again on Saturday, the 14th day of March, 1903, they met for the purposes aforesaid in the City of Philadelphia, with the Commissioners on the part of the State of Delaware, who were John Hunn, Governor of Delaware, Herbert H. Ward, Attorney-General of Delaware, and the Hon. George H. Bates; that after a thorough consideration of all the differences between the two States an agreement was reached and a compact prepared, subject to ratification by the Legislatures of the respective States, and the consent and approval of Congress. The compact received the unanimous endorsement of all the Commissioners from both States. It is herewith submitted as part of a proposed act, which, it is strongly recommended, should be enacted by the Legislature of this State at its present session. Your Commissioners feel that while it was not found practicable to settle the exact geographical boundary line between the two States, nevertheless every interest of the State of New Jersey has been protected, all its riparian, fishery and other rights and jurisdiction thoroughly safeguarded and every question of practical difficulty between the two States settled for all time. At the same time the interests of our sister State of Delaware have been amply safeguarded in a manner acceptable to the Commissioners from that State.

In witness whereof your Commissioners have hereunto set their hands this sixteenth day of March, nineteen hundred and three.

FRANKLIN MURPHY,
THOS. N. MCCARTER,
EDWARD C. STOKES.